In the High Court of Punjab and Haryana, Chandigarh.

C.W.P. No.8206 of 2005

Date of Decision: 12.3.2007

Layallpur Khalsa College, Jalandhar.

…Petitioner.

Versus

Presiding Officer, State Colleges Tribunal, Punjab, Chandigarh & Another.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Akshay Bhan, Advocate
for the petitioner.

Mr.J.S.Ahluwalia, Advocate
for the respondent No.2.

JUDGMENT

M.M.KUMAR, J.

In this petition filed by Layallpur Khalsa College, Jalandhar, under Article 226 of the Constitution of India prayer is for quashing order dated 18.1.2005 (Annexure P7) passed by the Presiding Officer, State Colleges Tribunal, Punjab (for brevity "The Tribunal") allowing the appeal of the employee-respondent No.2. The Tribunal, vide impugned order, has reinstated the employee-respondent No.2 by setting aside the punishment of removal from service. It has also been directed that the employee-respondent No.2 be treated on duty with effect from the date he was removed from

service and he be paid full back wages.

Brief facts of the case may first be noticed. The employee-respondent No.2 had joined the service of Layallpur Khalsa College, Jalandhar as Accounts Clerk on 13.3.1975. He was promoted as Accountant on 1.11.1977 and Accounts Officer with effect from 1.11.1981. He was charge sheeted on 30.5.1994 by the Management of the Layallpur Khalsa College. It was alleged that he was wilfully absent from duty and failed to maintain office record/accounts. He filed reply to the charge sheet on 11.6.1994. He was then placed under suspension on 27.6.1994 to which he replied. On 1.8.1994, the Enquiry Officer was appointed to enquire into the allegations who submitted his report on 20.12.1994. The employee-respondent No.2 was held guilty of all the charges. His case was referred by the Management of the petitioner College to the Director, Public Instructions (Colleges), Punjab, for approval of his dismissal from service. On 4.10.1996, the Director declined to accord approval. Accordingly, the employee-respondent No.2 was allowed to join duty on 16.10.1997 yet he was not paid his dues. The employee-respondent No.2 filed C.W.P. No.11251 of 1997 before this Court in which prayer was made for release of emoluments from 22.6.1994 to 15.10.1996. The writ petition was allowed and all the dues of the employee-respondent No.2 were paid on 8.8.1997.

On 27.11.1996, the employee-respondent No.2 had to proceed on leave on account of sickness. However, he was again charge sheeted on 30.4.1997 with similar charges which were mentioned in the earlier charge sheet dated 30.5.1994. He submitted his reply. Thereafter, the Enquiry Officer was appointed who found the employee-respondent No.2 guilty of charges. The Management of the Layallpur Khalsa College again recommended to the Director Public Instructions (Colleges), Punjab for his removal from service. The Director Public Instructions (Colleges), Punjab, approved the proposal of

the Committee on 31.3.2003 resulting into termination of the services of employee-respondent No.2. The order of the Director Public Instructions (Colleges), Punjab, was challenged in appeal and the Tribunal allowed the appeal and ordered reinstatement of the employee-respondent No.2 with full back wages. The concluding para of the order of the Tribunal is as under:-

> "After having listened to the arguments put across by the ld. Counsel for the appellant as well as for the respondent, it is abundantly clear that out of 15 times when the appellant applied for leave the same was sanctioned 11 times and only on 4 occasions the leave was not granted to him though he has cited sickness as the reason for leave. I find that the employee has been working for the last 25 years to the full satisfaction of the College Authorities and they have promoted him up to the rank of Accounts Officer as well. He was charge-sheeted even for the period when he was granted leave by the College Principal. As such it is miscarriage of justice for awarding him the punishment of removal from service. Accordingly the appeal is accepted and it is hereby ordered that Shri Kimti Lal Rana will be treated as on duty w.e.f. the date he was removed from the service and all back wages be paid to him within a period of three months"

It is appropriate to mention that the employee-respondent No.2 has to initiate contempt proceedings by filing C.O.C.P. No.1329 of 2006 for implementation of the order which has been dismissed as infructuous on 26.3.2007 as the employee-respondent No.2 has been reinstated in service.

When the petition came up for consideration of this Court, the Division Bench of this Court dismissed the writ petitioner by holding that no fault can be found with the order of the Tribunal in respect of reinstatement of

employee-respondent No.2. However, the Bench had doubted the impugned order only to the limited extent of payment of back wages.

We have heard learned counsel for the parties at a considerable length on the question as to whether the employee-respondent No.2 is entitled to payment of arrears of back wages from the date of his dismissal till the date of his reinstatement. It is true that the question of payment of back wages is independent of the question of reinstatement yet there has to be circumstances warranting imposition of cut in back wages or refusal to accept the prayer for back wages. Therefore, discretion in awarding back wages has to be exercised on some sound principle. There is no law in absolute terms that in all cases of illegal termination of service, an employee must be paid full back wages as has emerged from various judgments of Hon'ble the Supreme Court. In that regard, reference may be made to the judgment of Hon'ble the Supreme Court in the case of **"G.M. Haryana Roadways v. Rudhan Singh" (2005)5 Supreme Court Cases 591**. In para 8 of the judgment, Hon'ble the Supreme Court has observed as under:-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature or appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. <u>One of the important factors, which has to be taken into consideration, is the length of service, which the workman had</u>

rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year".

The aforementioned principles were reiterated by Hon'ble the Supreme Court in the case of **"U.P. State Road Transport Corporation v. Sarada Prasad Misra" (2006)4 Supreme Court Cases 733**, in para 16, which reads as under:-

"From the above cases, it is clear that no precise formula can be adopted nor "cast-iron rule" can be laid down as to when payment of full back wages should be allowed by the Court or tribunal. It depends upon the facts and circumstances of each case. The approach of the court/tribunal should not be right or mechanical but flexible and realistic. The court or tribunal dealing with cases of industries disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise

> than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the court or tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order".

It would, thus, be safe to conclude that no inflexible principle or rule of law could be adopted for payment of full back wages. The approach of the Court/Tribunal is required to be flexible and realistic and not rigid or mechanical.

When the facts of the present case are examined in the light of the principles laid down by their Lordships of Hon'ble the Supreme Court in the aforementioned judgment, we find that no factor defeating the claim of full back wages has been pointed out. The Tribunal has recorded a categorical finding that the employee-respondent No.2 applied for leave on 15 occasions which was sanctioned on 11 occasions. He was not given leave on four occasions, though he had cited sickness as a reason for leave. The period of absence without any sanctioned leave mention is 16.11.1996 (one day), 2.12.1996 (one day), 26.12.1996 to 15.1.1997 (19 days) and 1.3.1997 to 14.3.1997 (13 days). All the time leave was applied on account of sickness with supporting medical certificates. The employee-respondent No.2 has rendered 25 years of service to the complete satisfaction of the Management of the Layallpur Khalsa College, and he has been promoted twice. After rendering long service of twenty five years it may not be easy for the employee-respondent No.2 to secure employment now. The conduct of the Management of the Layallpur Khalsa College, is not worthy of its credit

because the employee-respondent No.2 was charge sheeted even for the period when he was granted leave by the College Principal. It was on the aforementioned premise that the Tribunal held it to be a miscarriage of justice to award the employee-respondent No.2 the punishment of removal from service. Therefore, we do not find any reason in law to disagree with the order of the Tribunal awarding the employee-respondent No.2 full back wages.

In view of the above, this petition fails and the same is dismissed. It is needless to say that the order of reinstatement of the petitioner had already been upheld as the petition to that extent was dismissed by this Court vide order dated 24.5.2005. The employee-respondent No.2 be paid all his back wages as per the directions issued by the Tribunal expeditiously, preferably within a period of two months from the date of receipt of certified copy of the judgment.

(M.M.KUMAR)
Judge

March 12, 2007 **(RAJESH BINDAL)**
dkb **Judge**